

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CURTIS ZAMERSKI and RICHARD KOHL,

Plaintiffs,

vs.

TERRENCE L. BODEWES, JAMES MALONEY,
VINCENT FETES, ERNEST BOUCHARD,
THOMAS HERR, DARYL BODEWES,
GEORGE FERRARO and JAMES BIDDLE, SR.,
personally and in their capacities as Trustees
and plan fiduciaries,

Defendants.

TERRENCE L. BODEWES, JAMES MALONEY,
VINCENT FETES, DARYL BODEWES,
JAMES BIDDLE, SR., GEORGE FERRARO and
THOMAS HERR,

Third-Party Plaintiffs,

vs.

ULICO CASUALTY COMPANY,

Third-Party Defendant.

**NOTICE OF MOTION AND
CROSS-MOTION FOR
SUMMARY JUDGMENT**

Civil Action No.: 01-CV-0365C

PLEASE TAKE NOTICE THAT upon this Notice of Motion and Cross-Motion for Summary Judgment, the Affidavit of Mark A. Costello, Esq. in Support of Third-Party Plaintiffs' Cross-Motion for Summary Judgment, sworn to January 30, 2004, and the Exhibit A appended thereto, the Affidavit of Daniel J. Sperrazza, Esq. in Support of Third-Party Plaintiffs' Cross-Motion for Summary Judgment, sworn to January 30, 2004, the Affidavit of R. Scott DeLuca, Esq. in Support of Third-Party Plaintiffs' Cross-Motion for Summary Judgment, sworn to January 30, 2004, and the Exhibit A appended thereto, Defendants/Third-Party Plaintiffs

Statement pursuant to Local Rule of Civil Procedure 56.1, the Memorandum of Law on Behalf of Defendants/Third-Party Plaintiffs Terrence L. Bodewes, Thomas Herr, James Biddle, Sr., and George Ferraro in Support of Defendants' Cross-Motion for Summary Judgment and in Opposition to Third-Party Defendant Ulico Casualty Company's Motion for Summary Judgment, and all prior pleadings and proceedings herein, DEFENDANTS/THIRD-PARTY PLAINTIFFS TERRENCE L. BODEWES, THOMAS HERR, JAMES BIDDLE, SR., AND GEORGE FERRARO will move this Honorable Court, Honorable John T. Curtin, Senior United States District Judge, Presiding, at a date and time to be determined by the Court, at the United States Court House, 68 Court Street, Buffalo, New York, for an Order granting Defendants/Third-Party Plaintiffs' cross-motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, denying Third-Party Defendant ULICO Casualty Company's motion for summary judgment, and for such other relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to Local Rule of Civil Procedure 56.1(e), the moving party intends to file and serve reply papers. Pursuant to the scheduling order issued by the Court subsequent to the filing of Third-Party Defendant ULICO Casualty Company's motion for summary judgment (dated December 19, 2003), all opposing and reply papers to be submitted by Third-Party Defendant ULICO Casualty Company must be filed and served no later than March 12, 2004. Moreover, pursuant to the scheduling order issued by the Court subsequent to the filing of Third-Party Defendant ULICO Casualty Company's motion for summary judgment (dated December 19, 2003), all reply papers to be submitted by Defendants/Third-Party Plaintiffs Terrence L. Bodewes, Thomas Herr, James Biddle, Sr., and George Ferraro must be filed and served no later than April 2, 2004.

Oral argument of this cross-motion is requested.

Dated: Buffalo and Rochester, New York
January 30, 2004

**BOYLAN, BROWN, CODE,
VIGDOR & WILSON, LLP**

COHEN & LOMBARDO, P.C.

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TO: **LEVY RATNER P.C.**
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CERTIFICATE OF SERVICE

I, R. Scott DeLuca, Esq., certify that on the 30th day of January, 2004, a copy of the annexed Notice of Motion and Cross-Motion for Summary Judgment was sent to counsel of record in this action, via first class mail, at the following addresses:

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